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## THE CREDIBILITY OF EARLY ROMAN HISTORY<sup>1</sup>

A REPROACH frequently cast at those who are engaged in the study of classical antiquity, is that their subject-matter has been worked over so long and so often that no further results can be obtained that have any value for men of the present. When new fields of research are so widely spread around us, it is worse than foolish to spend the time and effort on the old. Be this as it may, there is still one phase of the study of classical antiquity which has so far escaped the general condemnation. History, even of the olden time, has not yet become the object of the scorn of exponents of the latest educational ideas, and is in fact very much in vogue. The historical method must be applied, and rightly, to all branches of scientific study, and in spite of the unwillingness on the part of many to recognize the fact, it has been true for some years that teachers of the classics have insisted that the full culture-value of their subject could be obtained only when proper attention was paid to the social, political and economic conditions under which the literature was developed.

If we look carefully to the history of the world, what can be more important than a correct appreciation of the early centuries in the history of Greece and Rome, periods during one of which were developed the literature and art which have ever since been the unattainable standard of the world, and during the other of which that power arose which has been the paramount influence in law and government in all succeeding ages. Certainly we can not be accused of dealing with dead issues in laboring over the problems presented to us in either of these fields, and it is to the nature of the early history of the city of Rome that I now ask your attention.

It is a mere commonplace to remark that the earliest stages in the history of most peoples present very great difficulties in the way of arriving at anything like the exact facts, and this is usually due to the insufficiency of evidence that has come down to us, and to the inevitable errors resulting from the nature of tradition. In the case of the early history of the greatest city in the world, the difficulty is immeasurably increased by the well-known fact, that

<sup>1</sup> An address delivered by the President of the American Philological Association at its annual meeting, held in Cambridge, Mass., July, 1901.

in addition to all the errors inherent in the methods of transmission, we have to do with a considerable amount of material which is known to be the product of the deliberate invention of later times. So while the problem becomes exceedingly perplexing, the eagerness of scholars to solve it, becomes correspondingly keen. Nor can it be said that time and labor expended on its solution are wasted, so long as any hope remains of arriving at something like the real facts.

There are certain peculiar features in the case of Roman history, the most noticeable of which is the character of Roman literature, on which we must depend so much for our information. Here is no developing native product, but a literature due to foreign impulse, and worked out in conscious imitation of Greek models, both as regards form and substance. The earliest annalists of Rome intentionally followed their patterns, and the elimination of the Greek from the native is one of the most difficult parts of the problem. Most noticeable again in its effect upon the tradition of Roman history, was the servile attitude maintained towards Rome by the rest of the world after the Punic wars, which resulted in a deliberate falsification of everything in favor of the dominant power. With a very few apparent exceptions like Metrodorus of Skepsis, almost all historiographers of that period took part in the general chorus of adulation, entirely regardless of the truth. A third peculiarity of the situation is the presence of what was really an official or "canonical" tradition. The methods employed by the Greek and Roman manufacturers of early history, had resulted in the promulgation of numerous narratives of the same events, so contradictory as to disturb even the Romans themselves, and to bring about the formation of a sort of official version which became in a sense "canonical," and was generally accepted by the principal writers of the post-Ciceronian age. This is the account that Livy, for instance, usually presents, although all our historians do not hesitate to give very frequently other versions along with the "canonical." These conditions were recognized by the Roman historians themselves, but with hardly an exception, they failed entirely to develop what we call the critical method. Beyond a certain point this could not have been expected, but it is a source of surprise and disappointment that we have to wait until the close of the first century to find a Roman Thucydides.

The legacy of Rome, then, to the world, so far as her own early history is concerned, is a mass of fable, fact and fancy, inextricably interwoven, and commended to us by all the charm of Livian rhetoric, and this inheritance has been accepted and enjoyed with-

out question or cavil, by the vast majority even of scholars until very recent times. But it was inevitable that a day of reckoning should come, and as we all know, it was in the study of Niebuhr that the demolition and reconstruction of Roman history began. Niebuhr, Schwegler, Mommsen! Three mighty names to conjure with, and how great a contribution to the science of historical criticism they represent! But as in all other departments of human knowledge, where room for the erection of what is to last forever must be cleared by the destruction of what is insecure, the pendulum of belief swings widely but irregularly, sometimes rapidly, sometimes slowly, and it is long before the stable equilibrium of admitted fact is reached.

So in the matter under discussion, we have passed through the stage where all that has come down to us about the regal period was ruthlessly cast aside as absolutely false, the succeeding stage when men were inclined to see much that was true beneath the overlying strata of legend, then a stage when, in some quarters at least, an almost medieval attitude of belief was assumed, and now finally a period when even the first condition of skepticism seems to be well-nigh surpassed. There is, if we may so speak, a very renaissance of unbelief with regard to the first three centuries of Rome's existence. This oscillation may be paralleled perhaps by the change in the position of scholars with respect to the Old Testament, and in the field of Roman life, by the varying estimates of Cicero, his character and influence. From Drumann and Mommsen to Aly and Zielinski is a far cry, and between them in time and opinion we find everything from entire repudiation of a political renegade to unquestioning faith in the saviour of the commonwealth. But as the latest voice of Ciceronian criticism has tended to rehabilitate the great orator, the latest voice of historical criticism, uttered too by a descendant of the Romans themselves, is the most powerful yet heard in the attack upon all that tradition has handed down concerning the early history of Rome.

I refer of course to Ettore Pais and his great work *La Storia di Roma*, in the first two volumes of which he has discussed the history of Rome down to the time of Pyrrhus, and while following out the lines laid down by Mommsen in the *Roemische Forschungen* has gone far beyond that great man in the scope of his work, comprehensiveness of treatment and importance of results.

It is the misfortune of modern Italian scholarship that it has been so completely eclipsed by the transalpine; and the paucity of men of the first rank in the present generation has caused the world of scholars to look with suspicion upon an Italian book. But here at

least is a man to be reckoned with, and whether his conclusions are accepted or rejected, they can not be ignored, and his material and methods must be studied with the utmost attention. Apparently the importance of his work has so far been overlooked except by a very few. This is natural and excusable, particularly in this country, where the prevailing attitude towards the work of Italians is illustrated by the fact that up to the middle of last February, this book, though issued in 1898 and 1899, had not been placed on the shelves of the library of one of our most famous universities.

Before proceeding to the discussion of the results of this latest investigation of the sources of our knowledge of early Roman history, our attention should be fixed upon a factor in the problem, not new by any means, but which has recently assumed much larger proportions than formerly, that is the control exercised over results obtained in other ways by archaeological and topographical discoveries. The increased importance of material of this kind finds an excellent illustration in the information which has come into our hands as a result of the systematic excavations carried on in the Forum and Comitium during the past two years and a half. It was to be expected that in the archaeological remains of these two spots—one the center of Roman political life, the other the center of all else—much would be found to help in tracing the course of development of the city itself, as it was marked in monuments of brick and stone, monuments which could hardly be falsified by succeeding generations.

In general too little attention has been paid to the reciprocal relations of topography and history. Due weight has been readily given to the influence of environment upon the development of the individual, but there has been a failure to recognize the direct bearing of topographical conditions upon the historical progress of a nation, and to see how much with regard to the latter may be inferred from the former. As a matter of fact, the discoveries made within a space twenty feet square at the edge of the Comitium have precipitated a violent struggle between those who accept the traditional account of the regal period and those who do not, and the final settlement of the questions raised by these discoveries may go a long way in determining our attitude toward that tradition. To be sure the problem suggested here is not purely topographical but involves other elements as well, and the point may be better illustrated in a very simple case by noting that topographical conditions prove at once that Livy's account of the settlement of many thousand Latins in the valley *ad Murciae* in the days of Ancus Martius, must be absolutely wrong.

In view of the certain additions which have been and will continue to be made to our knowledge of the material remains of ancient Rome, and the publication of so notable a book as that of Pais, no apology is necessary for directing our attention again to the credibility of early Roman history, and we can perhaps do no better than follow our new leader in a brief review of the character of some of the sources from which information as to the events of the early period is derived, and of some of these events themselves.

At the very outset one must note the strange contrast that exists between the remarkable amount of detailed information given us by the annalists and the comparatively late period at which they did their work. There is a still greater contrast between this elaborate history and that of other peoples at the same relative stage of development, like the peoples of the east and of the Greek cities. If we know so little of the history of Magna Graecia before the fourth century, how is it that we know so much about Rome in the eighth and seventh?

Now it is as certain as anything can be, that the literature and culture of the Romans were due to Greek influence, and, necessarily, that what is related of their early history must have been due in some way or other to the labors of Greek historiographers transferred to native channels. The earliest Roman annalist wrote in Greek in the time of Hannibal, which two facts are enough in themselves to suggest the source and character of his story. We are told expressly that those who first wrote the history of Rome were Greeks, and their interest in things barbarian and Roman arose as a result of the intercourse between Greeks and Romans in the fifth century, when the Siciliotes and inhabitants of the Greek cities in southern Italy were necessarily brought into contact with the rising power of Rome. But though the earliest notices go back so far, it was not until the third century that Greek historians seem to have busied themselves especially with Rome, and the reason for this is easy to see. When in that momentous struggle between Greek and barbarian which culminated in the defeat of Pyrrhus, it became plain to every one that the seat of empire had been removed across the Adriatic, the clever Greek read the signs of the times and fell at once to describing, with or without knowledge, the beginnings and history of this new power. The form in which their narratives were put forth, determined all subsequent conceptions of the early history of Rome.

When these Greeks and their earliest Roman followers attempted to write the history of the first centuries of Rome, what had they in the way of records? The statement often made by the writers

of the Ciceronian period, that all monumental records such as statues, laws and inscriptions of various sorts, had perished in the Gallic invasion, must be true for the most part, but supposing that some of these monuments were in existence—and the discovery of the old inscription and surrounding structures in the Forum proves that some did survive—it is hardly possible that they would have been used to any great extent in working out the history of the earliest times. The evidence of the few fragments that now remain from the early days agrees with what we should infer from arguments of another kind, in showing that, if there had been no destruction like that wrought by the Gauls, there would have been few monuments of a sort to afford reliable historical information of a remote period. There is therefore little account to be taken of matter outside of oral and written records. The banquet songs described by Cato were doubtless a familiar feature of daily life, but even without the distinct repudiation of Cicero and Livy, we should recognize at once their worthlessness as historical documents.

The *Annales Maximi* were according to Cato's statement a list of magistrates, prodigies, eclipses and the price of corn. But these meager lists can not have made up those eighty rolls which Cicero describes and which contained the history of the city from the beginning down to 133 B.C., and which were diffuse enough to contain Piso's story of Romulus's use of wine. These *Annales* were written out long after the beginning of Latin literature, and owed their form and much of their content to the annals of the Greeks. In Pais's words, "The little that we know of them reveals such a direct imitation of the Greek writers, such abundance of words, or as we might better say, such garrulity, as suited the chatter of barbers [*quelle ciancie di barbieri*]' which Polybius censures in Sosilus and Chaerea, the historians of Hannibal, but which did not suit in any way the redaction of state documents, compiled at a tolerably early date." No fragment of the *Annales Maximi* in our possession belongs to a redaction earlier than the third century. In short, after Pais's keen critique, it is difficult to see in them anything but a second century creation, based on the tradition of the great Roman families, the works of early Greek historiographers, and the earliest Roman poets like Ennius, and we must recognize the fact that "these fragments which have come down to us have nothing to do with the most ancient pontifical tablets which were little more than an illustration of the calendar."

The influence of Ennius, Naevius and other early Roman poets, if such there were, in shaping the legendary history of the early period, has probably been greatly underestimated. It can be shown further,

that these poets drew their material for early times, as well as their inspiration from their Greek predecessors and contemporaries. It would be idle to discuss at length the characteristics of these Greeks who approached their subject with no intention or desire to learn the truth, but only to produce a skilfully constructed poem into which could be woven a vast mass of legend and myth, with the natural result that the product was characterized by pure imagination, duplication, and falsification. This compilation of the *Annales Maximi* during the second century, under the influence of the first Roman poets and annalists, gave rise to the formation of what is known as the "canonical" tradition of the origin and early history of the city, and this "canonical" form which was an attempt to correlate divergent accounts, seems to have been put into final shape by Varro in his systematization and arrangement of all existing knowledge.

Our own chief literary sources of information are three, Diodorus Siculus, Livy and Dionysius of Halicarnassus. The two latter give in general the accepted official version, while Diodorus is apt to present divergent accounts, and is usually credited with a greater degree of independent judgment. Nevertheless, the evidence of all three has practically no first hand value. The stream can not rise higher than its source.

Interesting illustrations of the way in which this early history was manufactured, abound on every hand. *Monumenta* of various sorts were made and attributed to the days of the Kings, as the lituus of Romulus, of which Cicero speaks in the *De Divinatione*<sup>1</sup>: "So do not mention the lituus of Romulus which you say could not have been burned in the great fire;" and of which Plutarch says: "It was kept in the Capitol, but lost when Rome was taken by the Gauls; afterwards when the barbarians had quitted the city, it was found buried deep in ashes, untouched by the fire, whilst everything about it was destroyed and consumed." Pliny the Elder<sup>2</sup> describes the costume of statues of the time of Romulus and Numa, and says of the statues of the three Fates near the Rostra: "I should suppose that these and that of Attus Navius were the first erected in the time of Tarquinius Priscus, if it were not for the fact that the statues of the earlier kings were on the Capitol,"—although in a preceding chapter he had expressly stated that the first bronze statue at Rome was made from the property of Spurius Cassius. Livy tells<sup>3</sup> how Romulus vowed the temple to Jupiter Stator in the battle between the Romans and Sabines, but in the tenth book<sup>4</sup> he writes: "Meanwhile the Consul raising

<sup>1</sup> II. 80.

<sup>2</sup> N. H., XXXIV. 22-23.

<sup>3</sup> I. 12, 6.

<sup>4</sup> 36, 11.



his hands to heaven, in a clear voice so that he might be heard plainly, vowed a temple to Jupiter Stator, if the flight of the Roman line should be checked," and a little later<sup>1</sup> having noticed the discrepancy, he continues: "And in this battle a temple was vowed to Jupiter Stator, as Romulus had previously vowed one; but he had consecrated only a *fanum*, that is the site set apart for the temple." Varro, quoted by Macrobius,<sup>2</sup> speaks of seeing a bronze tablet on which was engraved a law with regard to intercalary months, said to have been passed in the year 472 B. C. The most trustworthy account, however, refers this legislation to the year 191 B. C.

We may compare also the epigraphic fabrication related by Suetonius in describing the prodigies that happened at the death of Caesar.<sup>3</sup> A bronze tablet was found in the tomb where Capys was said to have been buried, on which was cut in Greek this prophecy: "When the bones of Capys shall be uncovered, a descendant of Julius shall be slain by the hands of his kinsmen, and soon afterwards avenged by great slaughter throughout Italy." And Suetonius continues: "The authority for this statement is Cornelius Balbus, a most intimate friend of Caesar, so that no one is to suppose it fabulous or fictitious."

To what extent etymology was made to serve the purposes of the historiographer, may be seen on every page of Varro's famous work *De Lingua Latina*, of which the following is a notorious and most instructive example:

"Various reasons are assigned for the name Aventine. According to Naevius, it was derived from *avis*, because the birds came there from the Tiber; according to others the Alban king Aventinus was buried there; and according to others still the word was derived from *adventus hominum* because on that hill the temple of Diana was erected which was a common sanctuary of the Latins."

"I prefer the derivation *ad advectu*, because formerly this hill was separated from the rest by marshes, and therefore people were brought thither from the city on rafts."

The manner in which topographical conditions and facts were utilized is illustrated by the tale found in Ovid, Valerius Maximus and Pliny, to the effect that the horns cut in the arch of the Porta Raudusculana in the Servian wall, commemorated the curious experience of a certain Roman praetor, Cipus Genucius, from whose head sprang such horns, as he was leading his army through this gate.

We can understand the direct and formal imitation of Greek models better if we keep in mind the famous definition of Quintilian<sup>4</sup>:

<sup>1</sup> X. 37, 15.<sup>2</sup> I. 13, 21.<sup>3</sup> *Jul. Caes.* 81.<sup>4</sup> X. 1, 31.

“historia . . . est enim proxima poetis et quodammodo carmen solutum et scribitur ad narrandum non ad probandum.” From form to matter is but a step, and the process is the same as that illustrated so distinctly in the domain of art. The Romans compared themselves to the Greeks long before Plutarch wrote his *Lives*, and they invented incidents in the careers of their heroes which should correspond to those of famous Greeks. Thus Scipio Africanus was said to have owed his birth to a miracle similar to that which brought Alexander the Great into being, and Tarquinius Superbus copied the procedure of Periander. The inevitable result was that the euhemerism of Ennius destroyed almost all of the germs of native mythology and theogony, and indicated the lines along which Roman historiography must move.

Furthermore, as the Romans themselves tell us, all their historians down to the time of Pompey belonged to distinguished families by relationship or clientage, and this very fact caused them to be at pains to exalt the history of their own clans, a fruitful source of fabrication. But there was another influence at work, and that was the desire to exalt the whole state, and its history. Hence the determined effort to give official sanction to the tradition that the Romans came of Trojan or Hellenic stock, and that they could trace their origin to a time as early as any of the Greek cities.

Two other factors in the formation of this artificial structure, the received story of the early days, were the duplication of events actual or alleged, and the influence of current political tendencies and theories. The duplication of events, that is the assigning of what happened at one time to another much earlier date, in either the same or a slightly disguised form, while not peculiar to Roman history, has there found its widest application. It is not among the least of Pais's services that he has brought out with proper emphasis the great importance of this factor. So numerous are the examples, such as the repeated stories of Manlius, and the explanations of the Lacus Curtius, that it would be useless to linger over them. The reasons for such duplication are patent at the first glance, among them the stereotyped character and conduct of those who belonged to the same house, the desire of succeeding generations to imitate the deeds of their ancestors, and the fact that so many of the clans seem to have assumed in successive years the command against the same foes. Variations in later versions seem usually to have been intentionally made, in order that suspicion might be averted. Consulships, dictatorships and censorships were boldly attributed to the ancestors of those who had held these offices in historical times, and so notorious was the practice that even Cicero and Livy protested

against it. In consequence of this same impulse, events of a later date were thrown back into earlier periods, as the fabled treaty of 508 B.C. between Rome and Carthage, and the establishment of the censorship in the days of Servius Tullius. The same tendency which has assigned to Charlemagne the achievements of more than one man produced such types as Appius Claudius and Coriolanus.

The last factor in the fabrication of Roman history upon which much weight must be laid, is that of the political attitude of the historian and his hero. Cato, as is well known, tried to do something to counteract this evil, by refusing to mention the names of those of whom he was writing, but nothing could have been farther from the purpose of all other Roman historians. One has only to read Livy's account of perfectly historical persons and events, to see how he deliberately warped or suppressed the truth in order to depreciate the services of those who represented opposite political views. Modern colorless critical history was something entirely unsupposable to the Roman mind. Education in morals and good citizenship, the avowed object of the Roman historian, demanded an expression on his part of what he considered right and patriotic, and a condemnation of the opposite. To the most critical and truth-seeking of Romans, even a writer like Froude would have seemed not only culpably impartial but absolutely impossible.

These elements have been recognized in some degree by all historians since Niebuhr, but the extent of their application has varied. We have in general come to regard the history of the regal period as legendary so far as details are concerned, but no such view has prevailed with regard to the republic. It is true that Mommsen in his *Roemische Forschungen* laid down the lines along which the investigation should proceed, and in his essays on Coriolanus, Spurius Maelius, Spurius Cassius and Marcus Manlius, demonstrated the non-historical character of many of the tales from the period of the early republic, but in these particular cases, the subjects were such as would most naturally be derived from mythical sources. Neither in his history nor in his essays, does Mommsen cast any serious doubt upon the truth of the main features of the traditional history of the period between the expulsion of the Kings and the fall of the decemvirate. The attitude of most scholars previous to 1898, may be illustrated by that of Pelham and Shuckburgh in their histories published in 1893 and 1894. Pelham, after explaining the reasons why the history of the early republic is subject to some extent to the same suspicions as that of the regal period, and stating that the "details are of no historical value," proceeds to relate the

course of events in such a way as not to suggest for a moment that he discredits the main features of the narrative. Shuckburgh is much less skeptical and gives his readers to understand that he is treating of what is genuinely historical.

Hardened as we have become to the process of having long cherished beliefs destroyed, and prone as we are to welcome innovations in all things, we can not overcome a sense of dismay at reading statements like these of Pais :

“We arrive therefore at the conclusion that the whole account of the decemvirate, that is the creation of this magistracy, the sending of the embassy to Athens, the codification of the laws of the Twelve Tables, the circumstances and procedure with reference to Virginia, no less than the second secession of the plebs, the following passage of the Canuleian laws, and the revolution at Ardea, are the results of unskillful attempts to combine self-contradictory traditions, and have at bottom no historical or chronological value.” . . .

“In the case of all the history of Roman legislation before the decemvirate we are confronted with accounts not originally true and only altered by later changes, but produced by real and deliberate falsification.

“The pretended constitutional history of Rome, described by the annalists of the second and first centuries, is in direct opposition to the honest and sincere declaration of Polybius who asserted that it was difficult to explain the beginnings and successive modifications, and to foretell the future phases of the Roman constitution, since the institutions of the past, both private and public, were unknown.”

This means that everything which has been handed down from the years before 440 B. C. is thoroughly discredited, and that the beginning of anything like genuine history must be placed after that date. It is doubtful if anything quite so destructive as this in the field of historical criticism has been effected for many years, and we are overpowered by the almost absolute negation involved. Pains-taking labor and the utmost skill in the employment of great learning, have combined to produce a monumental work of the greatest importance, and one which forces itself upon the attention of all students of classical antiquity.

Process and results are precisely the same for both the regal and early republican periods, but let us look rather at the latter and examine briefly two or three of the main features in the narrative which has come down to us. Perhaps the most noteworthy event in the twenty years after the expulsion of the Kings, was the secession of the plebs to the Sacred Mount, which marked the culmination of the first stage in the struggle between plebeian and patrician, and resulted in the establishment of that most unique of Roman institutions, the tribuneship. The circumstances are familiar to all, how in the midst of wars with Aequians and Volscians, the plebs

were put off again and again with false promises, until after the army had won a victory under the dictator Manius Valerius, and was encamped before the city, the Senate still refused to adopt the necessary reforms. Thereupon the army, by which we must suppose the plebeian part of it to be meant, marched in order to the Sacred Mount, or according to another version to the Aventine, and returned to the city only after their claims had been allowed, in part at least, and the tribuneship established. Half a century later, another secession is described. The decemvirs had refused to give up office, and had, it was alleged, caused Lucius Siccus Dentatus, a veteran of many campaigns, to be foully murdered, while the most notorious of the board, Appius Claudius, had by his attempt to carry off Virginia, forced her father to slay her in defense of honor. The army again marched to the Sacred Mount, nominated tribunes, advanced to Rome and occupied the Aventine. A compromise was negotiated by Valerius and Horatius, and the tribunate again established.

Now the very similarity of these two accounts is enough to arouse grave suspicion, and an investigation of all the attendant circumstances proves that the first secession is but an anticipation of the second, together with some features which repeat the story of the expulsion of the Kings. Thus of the two leaders in the secession, Lucius Junius Brutus and Caius Sicinius, the latter is but the duplication of C. Sicinius, one of the tribunes elected after the fall of the decemvirate, and both these again of that Sicinius who was tribune in 395 B. C., and after the taking of Veii proposed to emigrate thither from Rome and found a new state. The names of the tribunes, either when the establishment of the tribunate in 494 is spoken of, or the increase in their number in 471, or the reestablishment of the institution in 449, show by their identity or similarity, that they represent only repetitions and variations of the same tradition, and that the successive Sicinii or Sicii—for these appear to be variants of the same name—Icili, etc., are due to this process of duplication. So Manius Valerius who pacified the plebs in 494 before the first secession, is the same person, and the occasion the same, that we find described in Livy,<sup>1</sup> where he tells how in 342 the dictator M. Valerius Corvus checked the rage of the army by his eloquence, and again of the same occurrence in 302 or 300. In this latter year, moreover, this same Valerius, when Consul, caused the famous "*lex de provocatione*" to be again approved, which had been already passed twice in previous years, and always on the motion of members of this same family. That is, during the first

<sup>1</sup> VII. 39.

two hundred years of the republic, the passage of the same measure was attributed to the efforts of the same family thrice, which means, of course, that the annalists who wrote under the inspiration of the Valerii, thrust this action of theirs further and further back.

Let us pass over a half century, and take up the narrative of the decemvirate itself. The preceding contests between patricians and plebeians, the chaos resulting from the clashing of Consul and tribune, the sending of an embassy to Athens to learn something of the procedure of the Greeks, the appointment of a board of ten men for the year 451, who should supersede all regular constitutional magistrates and themselves discharge all executive, legislative and judicial functions while engaged in codifying Roman law, the reappointment of this board for the ensuing year although with considerable change in its personnel, the growth of tyranny and the personal ascendancy of Appius Claudius, the illegal refusal on the part of the decemvirs to surrender office at the end of the year and high-handed proceedings in maintaining their position, the murder of Siccius Dentatus, the story of Virginia, the second secession of the plebs, and the consequent fall of the decemvirs and the reëstablishment of consular and tribunician government, make up the framework of this story into which is woven a mass of details familiar enough.

At the outset we are met by two and perhaps three distinct traditions which as usual are not only different but irreconcilable. According to the received version, the decemvirs prepared only ten tables during the first year, and were continued in office in order to complete their work, but failing to do so, the last two tables were promulgated by Valerius and Horatius, Consuls in 449 and outspoken defenders of the rights of the plebeians. But this same version states that the law against intermarriage between the two orders was not repealed until 445 through the action of the tribune Canuleius, and by the law, called after him. How was it that Valerius and Horatius did not allow this privilege when they revised and completed the Twelve Tables? Furthermore, according to the received version, there were at least three plebeians among the decemvirs in the second year. How was it that they agreed to the perpetuation of this restriction which is represented as being one of the chief grounds of complaint among the plebeians?

It is evident that the account of this Canuleian law belonged originally to a version of the decemvir story entirely different from that which ascribed to them a bad character, or reckoned plebeians among their number for the second year, and which became afterwards canonical. If the plebeians had been represented among the decemvirs, they would never have submitted to the continuance of

this provision against intermarriage or the subsequent ineligibility of plebeians to hold office. Again, from a reference to Canuleius in Florus it would appear that one version was current, according to which Canuleius was the leader of the plebeians in another secession from the city, this time to the Janiculum. The accepted version then, according to which there were either three or five plebeians among the decemvirs during the second year, who became as tyrannical and ill-disposed towards their fellows as Appius Claudius himself with whom they were most closely associated, involves the highly improbable assumption that they joined with the patricians in putting forth legislation inimical to the interests of their own class, and that after having succeeded in winning so large a proportional representation upon this wholly extraordinary board of magistrates, they consented to be shut out of the consulship for the next three quarters of a century.

That there were other versions, however, dating from an earlier period, seems to be clearly shown by the account of Diodorus, according to whom it was provided in the last two tables, prepared by Valerius and Horatius, that one of the consuls must be a plebeian and both might be. Now it is perfectly certain that this stage in the struggle was not reached before the passage of the Licinian laws in 367, or their extension in 342, so that this version is manifestly the result of anticipation.

A similar confusion in the sources, so-called, is illustrated by the fact that those annalists who ascribed the last two tables to the decemvirs, also attributed to them the insertion of intercalary months, although this action was assigned by others to Romulus, to Numa, to Servius, or to the Consuls of 472.

The Valerio-Horatian laws of 449 were really a part of the story of the decemvirate, and contained, it was said, three principal provisions: first, that no magistrate should be elected from whose judgment there could be no right of appeal to the people; second, that the decisions of the *comitia tributa*, meaning thereby an assembly of the plebeians by tribes, should be binding upon the whole people; and third, that the persons of the tribunes should be inviolable. The first of these provisions was enacted in the year 300 by a Valerius, and Livy states that this was the third time that it had been passed, on each occasion through the instrumentality of a Valerius. The second was said to have been already passed in 471, and to have been presented again in 339 and 287, when by the Hortensian law the step was actually taken. With regard to the last, hopeless confusion prevailed. Livy said that in his time lawyers denied that inviolability was the result of this enactment, and the view that

the aediles were also made *sacrosancti* by this law, is proved to be absurd by the entire absence of any such condition in later times. In Livy's account also, the *decemviri iudices* are mentioned along with the tribunes and aediles, as having been made *sacrosancti*, but these decemvirs can be no other than the board which was afterwards known as *decemviri stlitibus iudicandis*, who had nothing to do with the decemvirs, and never had the slightest claim to inviolability. It is impossible to suppose that those who invented the Valerio-Horatian laws of 449, should have attributed to them the establishment of another decemvirate like the one just overthrown.

The leading figure in the story of the decemvirs, whose lust was the immediate cause of their expulsion, is represented as Appius Claudius, but he is found to be no more truly historical than his predecessors.

"All the Claudii, according to tradition, pursued the same course of political action. All were haughty and open enemies of the plebeians, going to extreme lengths in their opposition to them and always arrogant. This tradition, however, has been shown to be untrue. The Claudii, especially Appius Claudius Caecus, censor in 312, were people of culture, of progressive ideas, looking with favor upon popular tendencies and assisting the plebs, and it is easy to understand why they were described in the annals of their enemies as tyrannical. Furthermore all the Appii Claudii who made their appearance in Roman affairs before 312 are stereotyped characters. The first Claudius, according to the received family tradition, came to Rome in the first years after the expulsion of the Kings, but soon after his reception among the senators, displayed his hatred for the plebs. His descendants exhibit the same tendency; Appius Claudius, consul in 471, was accused by the tribunes Siccius and Duilius, and escaped punishment by suicide in precisely the same way as the hated decemvir of whom he is naturally the double. For this same reason, tradition said that during his consulship and in spite of his opposition various popular measures were passed. In 424 and 416 a Claudius recalls the decemvir; and C. Claudius who in 450 opposed the the plebs and the Canuleian rogation acted in the same way as the celebrated censor.

"We are told that this latter, when the time arrived for him to give up office, wished to remain, desiring to accomplish many great reforms; that he gave the sons of freedmen entrance into the Senate, and in order that he might not be forced to render an account of his actions, avoided the meetings of the Senate. This is practically the same thing which that earlier C. Claudius did, who when his colleague P. Valerius had been killed during the siege of the Capitol which had been seized by Appius Herdonius, took pains to prevent the election of a second colleague, and distracted the attention of the people with games, processions and amusements. Finally it is quite probable that some of the marked features of the legend of the censor Appius were taken from the deeds of the later Claudii, especially the censor of the year 169, who in a celebrated case, when he had been accused by the tribunes, came within a very little of being condemned."<sup>1</sup>

<sup>1</sup> Ettore Pais, *La Storia di Roma*, I. 1, pp. 567-569.



The names of the other decemvirs show their unhistorical character. Among the patricians, the family of Romilius, said to have been Consul in 455, is otherwise unknown; that of Rabuleius is nowhere mentioned among the patrician gentes or in the Fasti, and the only other Rabuleius of this early period was a tribune of the plebs in the time of Spurius Cassius. Lucius Minucius belongs with Spurius Maelius who is universally recognized as purely mythical, and after 457 there was no trace of any Minucius until the plebeian of that name became Consul in 305. It is strange to find an Antonius mentioned among the patricians in the fifth century, as the Antonii appeared first as tribunes in 167, and no one of the family was Consul until 92. With regard to the patrician Sestius, it is to be noted that the only other Sestius in the consular Fasti was the famous first plebeian Consul of 366, who was elected to that office in consequence of the Licinian-Sestian laws, and as their provisions were by some annalists assigned to corresponding legislation immediately after the fall of the decemvirate, it was natural to insert a Sestius among the members of that board.

With regard to the Consuls in the year after the expulsion of the decemvirs, Valerius and Horatius, the case is still more striking. The Horatii figure as Consuls in the years 509, 477, 457 and 447, but after this date there is no authentic record of an Horatius among Roman magistrates. The Valerii who appear with the Horatii in this period are only anticipations of the historical members of the family, and the Valerii and Horatii taken together, may be regarded as myths, corresponding to Lycurgus, Theseus and Zaleucus, who occupy the same relative positions in the historical development of Sparta, Athens and Locris. Later rationalism transformed these possible divinities into the two first Roman Consuls, and their appearance after the fall of the decemvirate and the new dawn of liberty for the plebs is a precise analogue to their appearance after the expulsion of the Kings and the bringing in of liberty for the whole people.

With regard to the character of the legislation of the Twelve Tables it must be noted that what has been handed down to us, gives evidence of legal conditions belonging to a period much later than the middle of the fifth century. There was said to have been a statute forbidding the burial of the dead within the city, but according to Servius this law was not passed until 260, in the consulship of Duilius. The making of wills was provided for, although in Sparta, a correspondingly conservative state, no such legislation occurred before the fourth century. Binding force is said to have been given to marriage without the ceremony of *confarreatio*, or

*coemptio*, although such laxity can hardly have been allowed so early, and an institution like the "*trinoctium*," or provision by which a wife, by staying three nights in each year away from home, could avoid coming "*in manum mariti*," appears wholly foreign to Roman ideas in the fifth century. Witness the evidence of the legend of Spurius Cassius who is represented as having no property of his own except the *peculium*. The coining of copper money is known not to have been begun until the middle of the fourth century, but the terms employed in the fragments of the Twelve Tables seem to point indubitably to such coinage.

The legislation of the Twelve Tables must, according to all antecedent probability, have been the result of slow growth, and its traditional form the result of the fusing of various redactions. For it is *a priori* unreasonable to suppose that any such codification, as these Tables are represented as being, should have been made once for all at so early a period. As Athens attributed to Solon a mass of later legislation, so Rome attributed to the decemvirs much that was of later origin. Lycurgus in Sparta, Carondas and Zaleucus in Magna Graecia, and Diocles in Syracuse, illustrate the same process.

The true view, that the legislation of the Twelve Tables comprises in substance the legal development of the fourth century, finds support in the narrative of Appius Claudius, the censor in 312, and Gnaeus Flavius, the scribe of the pontifices, who was raised to the office of curule aedile by the help of Appius. As has already been pointed out, the decemvir was developed from the character and deeds of the censor, and, furthermore, an examination of the work of Flavius has frequently suggested the correspondence between it and that of the decemvirs. "The latter formulated and published the civil law, and freed the citizens from the abuse of the magistrates and unskilful lawyers, the former by publishing the formulas of this law and the list of days for transacting legal business, arrived at the same result. To the decemvirs was attributed the formation of that calendar which Flavius published." So in Cicero's time there was a dispute as to whether Flavius lived before or after the promulgation of the laws of the decemvirs, and some asserted that what he published was afterwards withdrawn from the knowledge of the people. The confusion arising from this double tradition—the publication of the results of the decemviral legislation by the board itself or the succeeding consuls, or by Flavius in 305—gave rise to the further version according to which rights once in possession of the people were afterwards taken from them. The real publication of the Fasti in 305 appears therefore to have been one of the causes for the formation of a story of a corresponding publication at the time

of the decemvirs, and one more link in the chain of evidence against their actual existence.

Once more, according to another version, the publication of the Twelve Tables was said to have been entrusted to the plebeian aediles, although it is manifestly absurd to suppose that so important a matter should have been placed in the hands of minor plebeian officials at so early a date. Careful analysis seems to show that the tradition of the presence of plebeians among the decemvirs, is due to the confusion of the different sorts of decemvirs, *decemviri agris adsignandis*, *stlitibus iudicandis* and *legibus scribundis*, and that their insertion in the last is due to their presence in historical times in the second. The proposal to burn *the* decemvirs is another form of the tale related by Valerius Maximus, in which the tribune Mucius burns his nine colleagues and the history of the turmoil and agitation during the decade between the supposed Terentilian rogation and the decemvirate, is only the duplication of what happened in the decade preceding the enactment of the Licinian laws of 367, which were sometimes identified with those of 449.

Another element in the traditional history of the decemvirate, namely the embassy to Athens, upon close examination proves to be as unhistorical as the rest of the story. In the first place, how is it possible that the names of these ambassadors could have been remembered so exactly, when in Cicero's time men were not sure of the names of those who were sent out in the year 146 to assist Memmius in the reorganization of the province of Greece. The explanation is that Postumii, Sulpicii and Manlii were ambassadors to Greece in the third century, and hence members of these same families were said to have taken part in the first embassy. In the second place, the story of the sending of an embassy to Athens on such an errand, was a result of that same tendency among the historiographers of the two countries to prove the parallelism of their institutions, or at least the imitation of the Greek by the Roman. The choice of the best of Greek legal principles seemed to them a thoroughly characteristic thing for the Romans to make. The relations existing between Athens, the Greek cities in Italy, and Rome, were of such a nature that it would be to Athens that such an embassy would naturally be sent, and the fact that Roman law was anything but an imitation of the Greek was quite lost sight of in the general desire to connect the two peoples in every possible way. To sum up in the words of Professor Pais :

“The story of the decemvirate . . . which we have seen to be false on its external side is no more authentic with regard to its essential or in-

ternal character, and the natural consequence is that the whole account is to be rejected in its entirety as a later invention.

“The pseudo-history from the expulsion of the Kings to the fall of the decemvirs and the conspiracy of Spurius Maelius, consists of two or three parts which are repeated. To the Sabine invasions and the continual wars with Volscians and Aequians, correspond the popular agitations which led to the secessions of 494 and 450, and the creation of tribunes in 493, 471 and 449. All these varying acts in the drama are the result of the simple duplication of the same event.”

For the period after the decemvirate and down to the sack of Rome by the Gauls, this rigid criticism discloses a similar chaotic condition of tradition, and it is only gradually, even in this fourth century, that we begin to find trustworthy and accurate historical data.

If now this view of the tradition of the history of Rome for the first three or four centuries be justified, what answers can be given to the two questions that at once present themselves, *i. e.*, Is any credence to be given to any part of this tradition? and What process is to be employed in attempting to separate the true from the false? The answers made to these two questions will condition the method to be followed in reconstructing early Roman history, which is simply the recognized method of modern historical criticism.

As all know, great activity has been displayed during recent years in studying the so-called sources of Roman history, those earlier annalists from whom Diodorus, Dionysius, and Livy and their successors drew much of their information, and attempts have been made to assign relative historical value to these sources. Great critical acumen has been developed in these investigations, but the data are necessarily so meager in most cases, and the temptation to skilful combination and bold hypothesis so great, that one feels an instinctive distrust of the dogmatic conclusions of even the most learned scholars. Not that something has not been really accomplished, and we may, for instance, feel reasonably sure that Diodorus is on the whole more likely to have used better sources than Dionysius, but after all the difference is comparatively slight. In view of the many varying accounts of the events of Rome's early history, the mere fact that one version can be traced to one annalist rather than another, is in itself and usually, no valid reason for believing that it is true, and the answer to the first question may be prefaced by the statement that because *any* particular narrative is told by *any* particular annalist, is in itself no sufficient reason for its acceptance. This acceptance or rejection must rest on other grounds. On the other hand, it is absurd to assume that *all* of this tradition is necessarily false. Such wholesale rejection would be as

irrational as entire and unquestioning acceptance, for it is manifestly impossible, according to the ordinary laws of chance, that some truth should not have entered into the narrative. The answer, therefore, to the first question must necessarily be in the affirmative, and we are immediately confronted with the second, which is infinitely more difficult.

We may, of course, assume an entirely agnostic position, and maintain that it is impossible to discover data sufficient to enable us to unravel the tangled threads of truth and fiction. Or we may take the position that there is some method by which an approximation at least to the truth may be made. This is the only reasonable attitude, and the method of approach must be, briefly, the following. We are in the presence of numerous conflicting versions of early events. One series has obtained wider currency and authority, because it received in antiquity the stamp of "canonicity," and the others have been cast aside for the most part as of less value. This view must be entirely abandoned at the very outset, and all versions from every source admitted as having equal validity. Then, so far as possible, the genesis of each version must be traced out, and its relation in time and place to the others determined, regardless of any preconceived superiority of one over another. This determination of genesis, time and place, and interrelation will in most cases be quite indefinite, but it is imperative that the first step in the process be the assembling of *all* traditional matter with such determinants as can be found. Having this material before us, we proceed to select, accept or reject, not according to any theory of the superior credibility of one supposed source over another, but as a result of the application of principles of criticism that have been derived from other sources of knowledge, that is the testimony and test of archaeological evidence, topographical conditions, comparative law, philology and religion, and the known laws of historical development. For it may be taken for granted that no nation develops and decays in a manner wholly peculiar to itself. Out of this traditional material much will be rejected at once because it cannot be reconciled with the testimony of one or another of the criteria just mentioned. In many cases only one version will be found which corresponds with this testimony, and it may be accepted provisionally. Some cases will occur where two or more versions are equally admissible according to the standards which have been adopted, and as there is no means of coming to a decision between them, historical value must be denied them all,—so far at least as basing any further inferences on them is concerned. The application of this method to the mass of literary tradition, will

leave little in the way of details that can be accepted as trustworthy, but to this little can be added the constantly increasing amount of information as to the gradual course of development, which is supplied by these very fields of research, archaeology, topography, law and religion.

If we are obliged to give up the entertaining details of literary story, we get in their place the infinitely more important and useful general testimony of more trustworthy witnesses. The assumption that it is possible, out of the literature itself, to separate the true from the false, seems to me to have been a fundamental error in many attempts to reconstruct early Roman history, for in the very nature of the case, the judgment must rest in a large part upon an entirely unmeasurable quantity,—the varying conception of historical aim and method held by the Greek and Roman annalists.

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